



RESOLUTION
(49 - 2015)

**A RESOLUTION OF THE FAIRVIEW CITY COUNCIL AUTHORIZING A PUBLIC
IMPROVEMENT CONTRACT, FOR CONSTRUCTION SERVICES FOR THE
BRIDGE STREET SANITARY SEWER IMPROVEMENTS 2015 PROJECT**

WHEREAS, in 2013 the City Council adopted the City's Sanitary Sewer Master Plan (SSMP); and

WHEREAS, Section 6 of the SSMP details the need for continuing rehabilitation of concrete sewers; and

WHEREAS, Bridge Street was identified as in need of repair due to existing pipe condition; and

WHEREAS, Adjacent Creekside Terrace sewer was identified by City's Public Works Superintendent and Engineering Associate as needing rehabilitation; and

WHEREAS, the City received proposals to perform engineering and related professional services in response to the 2013 Request for Qualifications for Engineering Services; and

WHEREAS, the direct appointment procedure detailed in OAR 137, Division 48 was followed as specified in the City's Contracting Rules; and

WHEREAS, All County Surveyors & Planners Inc. was selected based on expertise, project understanding, responsiveness, previous work samples and other relevant factors; and

WHEREAS, All County Surveyors & Planners Inc. was awarded a contract with the City of Fairview for professional engineering services for the design of the Bridge Street Sanitary Sewer Improvements 2015 project which design was completed in August, 2015; and

WHEREAS, The City competitively bid the project in accordance with the state public improvement contract law ; and

WHEREAS, Canby Excavating Inc. is the lowest responsible bidder with a bid of \$349,114.00, based on the unit costs of the anticipated quantities for the project; and

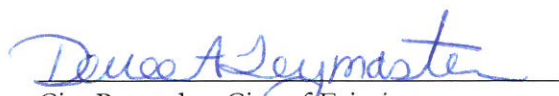
**NOW, THEREFORE, BE IT RESOLVED BY THE FAIRVIEW CITY COUNCIL AS
FOLLOWS:**

Section 1 The Fairview City Council hereby authorizes the Interim City Administrator to enter into a public improvement contract with Canby Excavating Inc. for construction of the Bridge Street Sanitary Sewer Improvements 2015 project for the City of Fairview for work described in the attached Exhibit "A."

Section 2 This resolution is and shall be effective from and after its passage by the City Council.

Resolution adopted by the City Council of the City of Fairview, this 16th day of September, 2015.

ATTEST


City Recorder, City of Fairview
Devree Leymaster



Mayor, City of Fairview
Ted Tosterud

9-21-15

Date

AGREEMENT

This Agreement is dated as of the _____ day of _____ in the year 2015 by and between: CITY OF FAIRVIEW (here-in-after called Owner) and

(here-in-after called Contractor)

Owner and Contractor, in consideration of the mutual covenants here-in-after set forth, agree as follows:

ARTICLE 1 - WORK

1.01 Contractor hereby agrees to furnish all labor, materials, equipment and supplies for the construction of the project entitled:

CITY OF FAIRVIEW – Bridge Street Sanitary Improvements 2015

The project generally consists of:

1. Pipe burst approx. 2,154 lf of 8-inch diameter concrete sanitary sewer main with an 8-inch HDPE liner.
2. Install approximately 36 lf of 8-inch PVC sanitary sewer main (open trench)
3. Pipe burst approximately 24 6-inch sanitary sewer laterals.
4. Install approximately 10 new 6-inch PVC sanitary sewer laterals (open trench).
5. Install approximately 18 replacement 6-inch PVC sanitary sewer laterals (open trench).
6. Restore various surfacings.
7. Perform additional and incidental Work as called for by the Specifications and Plans.
8. Alternate Bid item to complete approximately 174 lf of Cured-in-Place 8-inch Pipe Lining.

ARTICLE 2 - Engineer

2.01 The Project has been designed by ALL COUNTY SURVEYORS & PLANNERS, INC., who is here-in-after called Engineer and who will assume all duties and responsibilities and will have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIME

3.01 The Work shall be substantially complete by **November 30, 2015**.

3.02 Liquidated Damages: Owner and Contractor recognize that time is of the essence in this Agreement and that Owner will suffer financial loss if the Work is not substantially complete within the time specified in Article 3.01.

3.03 In the event the successful bidder fails to achieve substantial completion or final completion within the time limits specified in the contract documents, liquidated damages shall be paid to Owner. Liquidated damages shall be paid in the amount of **\$500** per day, based on loss of use if the project is not complete within the time specified in Article 3.01, with such extensions of time as are provided for in the General Conditions.

ARTICLE 4 - CONTRACT PRICE

4.01 Owner shall pay Contractor for performance of the Work the amounts determined for the total number of each of the units of work in the bid schedule completed at the unit price stated. The number of units contained in this schedule is approximate only, and the final payment will be made for the actual number of units that are incorporated in, or made necessary by the Work covered by the Contract.

ARTICLE 5 - PROGRESS PAYMENT PROCEDURES

5.01 On no later than the 4th day of every month, the Contractor shall prepare and submit to the Engineer a progress payment estimate filled out and signed by the Contractor covering the total quantities under each item of work that have been completed from the start of the job up to and including the last day of the preceding month, and the value of the work completed with such supporting evidence as required by the Owner and/or Engineer. This estimate shall also include an allowance for the cost of such materials and equipment required in the permanent work as has been delivered to the site and suitably protected but not as yet incorporated in the work.

5.02 The Engineer will, within 5 days, after receipt of each progress payment estimate, either indicate in writing the approval of payment and present the progress payment estimate to the Owner or return the progress payment estimate to the Contractor indicating in writing the reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the progress payment estimate.

5.03 On or about the 25th day of each month, the Owner will, after deducting previous payments made, pay to the Contractor 95% of the amount of the estimate as approved by the Engineer. The 5% retained percentage will be held by the Owner until the final completion of all work under the Contract.

5.04 Progress payments shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

ARTICLE 6 - FINAL PAYMENT

6.01 The Contractor shall notify the Engineer in writing when the work is considered complete and ready for final inspection and acceptance. Within 15 work days after receiving the notice, either accept the work or notify the Contractor of work yet to be performed. If the work is accepted, the Engineer shall notify the Contractor and will make a final estimate and recommend acceptance of the work as of a certain date. Upon approval and acceptance by the Owner, the Contractor will be paid a total payment equal to the amount due under the contract including all retainage.

6.02 Prior to final payment the Contractor shall deliver to the Owner a receipt for all amounts paid or payable to the Contractor and a release and waiver of all claims against the Owner arising from or connected with the contract and shall submit evidence satisfactory to the Engineer that all amounts due for labor, materials and all other obligations connected with the work have been fully and finally settled, or are fully covered by insurance.

6.03 The acceptance by the Contractor of the final payment shall release the Owner and the Engineer from all claims and liability to the Contractor for all things done or furnished in connection with the work, and for every act of the Owner and others relating to or arising out of the work.

ARTICLE 7 - INTEREST

7.01 All moneys not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project, when requested in accordance with ORS 279.

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

8.01 Contractor has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions, and federal, state, and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

8.02 Contractor has studied all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by Engineer in the preparation of the Drawings and Specifications.

8.03 Contractor has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 8.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by Contractor for such purposes.

8.04 Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

8.05 Contractor has given Engineer written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.

ARTICLE 9 - MEDIATION

9.01 Should any dispute arise between the parties to this Agreement, it is agreed that such dispute will be submitted to a mediator prior to any litigation, and the parties hereby expressly agree that no claim or dispute arising under the terms of this Agreement shall be resolved other than first through mediation and, only in the event that such mediation efforts fail, through litigation.

9.02 The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Multnomah County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this section.

ARTICLE 10 - CONTRACT DOCUMENTS

10.01 Contractor will comply with all provisions set forth in the Contract Documents as if fully set forth herein.

10.02 The term "Contract Documents" means and includes the following:

Invitation to Bid	Payment Bond
Information for Bidders	Performance Bond
Instructions to Bidders	Notice of Award
Bid Proposal Form	Notice to Proceed
Non-Collusion Affidavit	Change Order
Prevailing Wage Certification	General Conditions
Resident Bidder Status	City of Fairview – Standard General Conditions
Asbestos Certification	State Wage Rates
Statement of Drug Testing Program	Special Provisions
First Tier Subcontractor Disclosure	Contract Drawings prepared or issued by All County Surveyors & Planners, Inc., dated September 2015
Form	City of Fairview Standard Details
Qualification of Bidder	Addendum: No. ____, dated _____
Bid Bond	Addendum: No. ____, dated _____
Agreement	Addendum: No. ____, dated _____
	All items included within these Contract Documents.

ARTICLE 11 - MISCELLANEOUS

11.01 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party thereto without the written consent of the party sought to be bound; and specifically without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

11.02 Owner and Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives; in respect to all covenants, agreements and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, the parties hereto have signed four copies of this Agreement.

This Agreement will be effective on _____, 2015.

Owner: _____ City of Fairview _____

Contractor: _____

_____ 1300 NE Village Street _____

_____ Fairview, Oregon 97024 _____

By: _____

By: _____

Address for giving Notices: _____

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PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That, WHEREAS, the City of Fairview, State of Oregon, on _____, 20____, has awarded to _____ hereinafter designated as "Principal", a Contract for construction of the Bridge Street Sanitary Improvements 2015, the terms and provisions of which contract are incorporated herein by reference, and;

WHEREAS, said Principal is required to furnish a bond in connection with this said Contract, providing that if said Principal, or any of his or its subcontractors, shall fail to pay for any materials, provisions, provender or other supplies or teams used in, upon, for, or about the performance of the work contracted to be done, or any other work or labor done thereon of any kind, the Surety of this body will pay the same to extend hereinafter set forth;

NOW, THEREFORE, we the Principal and _____, as Surety, are held and firmly bound unto the City of Fairview, State of Oregon, in the penal sum of _____ Dollars (\$_____), lawful money of the United States, being one hundred percent (100%) of the Contract amount for the payment of which sum well and truly to be made, we bond ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

NOW, THEREFORE, if the above bounden Principal or any of his subcontractor shall promptly make payment to all persons supplying labor and material or amounts due in the prosecution of the work provided for in said Contract, and any and all duly authorized modifications of said Contract that may hereafter be made, then this obligation shall be void; otherwise, this obligation shall remain in full force and virtue; and if the bounden Principal or any of his subcontractors fails to promptly pay any of the persons or amounts due with respect to work or labor performed by any such claimant, the Surety will pay for the same, in an amount not exceeding the sum specified in this bond, and also in case suit brought upon this bond, a reasonable attorney's fee, be fixed by the court; and this bond shall insure to the benefit of any persons so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

The bond shall insure to the benefit of any all persons, companies and corporations entitle to file claims, so as to give a right of action to them or their assigns in any suit brought upon this bond.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed there under, or the Specifications accompanying the same shall in any wise affect its obligations on this bond; and it does

hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the work or to the Specifications.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their seals this _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Principal

Attorney-in-Fact, Surety

Name and Address
Local Office of Agent

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That, WHEREAS, the City of Fairview, State of Oregon, on _____, 20____, has awarded to _____; hereinafter designated as the "Principal", a Contract for construction of the Bridge Street Sanitary Improvements 2015, the terms and provisions of which Contract are incorporated herein by reference, and;

WHEREAS, said Principal is required under the terms of said Contract to furnish a bond for the faithful performance of said Contract;

NOW, THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the City of Fairview, State of Oregon, in the penal sum of _____ Dollars (\$_____), lawful money of the United States, being one hundred percent (100%) of the Contract amount for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bound Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and faithfully perform the covenants, conditions, and agreements in the said Contract and any alterations made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City of Fairview, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the said Contract, the above obligation to the amount of _____ Dollars (\$_____), shall hold good for a period of one (1) year after the completion and acceptance of the said work, during which time if the above bounden Principal, his or its heirs, executors, administrators, successors or assigns shall fail to make full, complete and satisfactory repair and replacements or totally protect the said City of Fairview from loss or damage made evident during said period of one (1) year from the date of

acceptance of said work, and resulting from or caused by defective materials or faulty workmanship in the prosecution of the work done, the above obligation in the said sum of _____ Dollars, (\$_____), shall remain in full force and virtue; otherwise the above obligation shall be void.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration of addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any wise affect its obligations on this bond; and it does hereby waive notice of any such change, extension of time alteration or addition to the terms of the Contract, or to the work, or to the Specifications.

In the event the City of Fairview or its successors or assigns, shall be the prevailing party in an action brought upon this bond, then in addition to the penal sum hereinabove specified, we agree to pay to said City of Fairview, or its successors or assigns, a reasonable sum on account of attorney's fees in such action, which sum shall be fixed by the court.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their seals this _____ day of _____, _____, the name and corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Principal

Attorney-in-Fact, Surety

Name and Address
Local Office of Agent